

E-FILED on: 8/5/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re: Stephen J.R. Goetz and Diana Goetz,
Debtors.

No. C-07-06364RMW

[Re Docket No. 5]

STEVEN J.R. GOETZ,
Appellant,
v.
JOHN CHALLAS,
Appellee.

ORDER GRANTING THE MOTION TO
DISMISS STEPHEN GOETZ'S APPEAL

Debtor Steven Goetz appeals from a bankruptcy court order finding that the confirmation of plan of reorganization did not discharge the slander claim brought against him by the appellee, John Challas. *See In re Goetz*, 2007 WL 3095418 (Bankr. N.D. Cal. Oct. 19, 2007) (Morgan, B.J.). Mr. Challas moves to dismiss the appeal. Mr. Goetz has not filed an opposition. The court has reviewed the moving papers and considered the argument of counsel for Mr. Challas. For the reasons set forth below, the court grants the motion.

I. PROCEDURAL HISTORY

Following the entry of the bankruptcy court's order permitting Mr. Challas to pursue his claim for slander, Mr. Goetz filed a notice of appeal on November 1, 2007. *See Decl. of Daniel D.*

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1 McGee, Ex. 2. Mr. Goetz designated a swath of materials to consist of the record on appeal,
2 including the bankruptcy court's memorandum opinion and the transcripts of various hearings. *See*
3 *id.*, Ex. 3. Upon receipt of the notice of appeal, the bankruptcy appellate panel sent an opening letter
4 to the parties informing them of the need to transmit the record on appeal. *See id.*, Ex. 5 (citing Fed.
5 R. Bankr. P. 8006 and Fed. R. Bankr. P. 8007).

6 Mr. Challas declined to proceed before the bankruptcy appellate panel and Mr. Goetz's
7 appeal was reassigned to this court. *See id.*, Ex. 8. The court scheduled a case management
8 conference for April 18, 2008. *See* Docket No. 4. Mr. Challas filed a status conference statement
9 noting that Mr. Goetz had failed to lodge the record of the proceedings below. *See* McGee Decl.,
10 Ex. 9 (Docket No. 3). Mr. Goetz failed to appear at the case management conference. *See* McGee
11 Decl., Ex. 10 (Docket No. 4).

12 To permit his underlying adversary proceeding to go forward, Mr. Challas filed the pending
13 motion to dismiss on May 13, 2008. Mr. Goetz has not filed an opposition.

14 II. ANALYSIS

15 Federal Rule of Bankruptcy Procedure 8006 requires the appellant to, among other things,
16 designate what he wishes to include in the record on appeal. Mr. Goetz did that much. *See* McGee
17 Decl., Ex. 3. Rule 8006 requires the party requesting that a designated item be included in the
18 record to provide it, and if the party fails, the clerk must prepare a copy of the designated item at the
19 party's expense. Similarly, Rule 8006 requires a party requesting that the record include a transcript
20 to provide the transcript. The clerk has no duty to prepare or provide a transcript if a party to the
21 appeal fails to provide the requested transcript. *See* Fed. R. Bankr. P. 8006. Compiling this record
22 is "mandatory, not optional." *In re McCarthy*, 230 B.R. 414, 417 (9th Cir. BAP 1999). Failure to
23 compile and transmit the record prevents the appellate court from exercising its function.
24 Unsurprisingly, such a failure justifies dismissal of the appeal. *Id.* (citing *Syncom Capital Corp. v.*
25 *Wade*, 924 F.2d 167, 169 (9th Cir. 1991)); *but see In re Williams*, 287 B.R. 787, 791-92 (9th Cir.
26 BAP 2002) (noting an inadequate record on appeal but opting to reach the merits of the issue
27 presented).

1 Mr. Goetz was first reminded of the need for him to perfect his appeal in early November.
2 He was again reminded when Mr. Challas flagged the issue in his status conference statement,
3 though Mr. Goetz declined to appear at the status conference. Mr. Goetz was informed of his failure
4 a third time by Mr. Challas' motion to dismiss.

5 Mr. Goetz has ignored these reminders. He failed to appear the initial case management
6 conference in this court. He has also failed to oppose Mr. Challas' motion to dismiss. Because Mr.
7 Goetz has failed to perfect the record for review, failed to appear before this court and failed to
8 diligently prosecute his appeal, the court grants Mr. Challas' motion to dismiss.

9 III. ORDER

10 For the foregoing reasons, the court grants the motion to dismiss the appeal. The clerk may
11 close the file.

12
13 DATED: 8/4/2008



RONALD M. WHYTE
United States District Judge

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6 Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

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13 **Dated:** 8/5/2008

14 TSF
Chambers of Judge Whyte